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10 Attorneys for Plaintiff: JAMES RUTHERFORD

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION
13

14 JAMES RUTHERFORD, an
15 individual,
16 Plaintiff,

17 v.

18
19 JOYCE UNLIMITED, INC., a
20 California corporation; TALAT
21 RADWAN AND NATASHA
22 RADWAN, Co-Trustees of the
23 CANYON SPRINGS
24 INVESTMENT TRUST; and DOES
25 1-10, inclusive,

26 Defendants.

Case No.

**First Amended Complaint For
Damages And Injunctive Relief For:**

1. VIOLATIONS OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, 42 U.S.C. §12181 *et*
seq.
2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT, CALIFORNIA
CIVIL CODE § 51 *et seq.*

27 Plaintiff, JAMES RUTHERFORD ("Plaintiff"), complains of Defendants
28 JOYCE UNLIMITED, INC., a California corporation; TALAT RADWAN AND

1 NATASHA RADWAN, Co-Trustees of the CANYON SPRINGS INVESTMENT
2 TRUST; and DOES 1-10 (“Defendants”) and alleges as follows:

3 **PARTIES:**

4 1. Plaintiff is an adult California resident. Plaintiff is substantially limited
5 in performing one or more major life activities, including but not limited to:
6 walking, standing, ambulating, sitting, in addition to twisting, turning, and grasping
7 objects. As a result of these disabilities, Plaintiff relies upon mobility devices,
8 including at times a wheelchair, to ambulate. With such disabilities, Plaintiff
9 qualifies as a member of a protected class under the Americans with Disabilities Act
10 (“ADA”), 42 U.S.C. §12102(2) and the regulations implementing the ADA set forth
11 at 28 C.F.R. §§ 36.101 et seq. At the time of Plaintiff’s visits to Defendant’s facility
12 and prior to instituting this action, Plaintiff suffered from a “qualified disability”
13 under the ADA, including those set forth in this paragraph. Plaintiff is also the
14 holder of a Disabled Person Parking Placard.
15

16 2. Plaintiff brings this action acting as a “private attorney general” as
17 permitted under the American with Disabilities Act of 1990 (“ADA”) to privatize
18 enforcement of the ADA without the American tax payer(s) bearing the financial tax
19 burden for such action.
20

21 3. Defendant TALAT RADWAN AND NATASHA RADWAN, Co-
22 Trustees of the CANYON SPRINGS INVESTMENT TRUST, owned the property
23 located at 12125 Day Street, Moreno Valley, CA 92557 (“Property”) on August of
24 2018.

25 4. Defendant TALAT RADWAN AND NATASHA RADWAN, Co-
26 Trustees of the CANYON SPRINGS INVESTMENT TRUST, owns the Property
27 currently.
28

5. JOYCE UNLIMITED, INC., a California corporation, owned, operated

1 and controlled the business of JJ'S MARKET AND LIQUOR ("Business") on
2 August of 2018.

3 6. JOYCE UNLIMITED, INC., a California corporation, owns, operates
4 and controls the Business currently.

5 7. Plaintiff does not know the true names of Defendants, their business
6 capacities, their ownership connection to the Property and Business, or their relative
7 responsibilities in causing the access violations herein complained of, and alleges a
8 joint venture and common enterprise by all such Defendants. Plaintiff is informed
9 and believes that each of the Defendants herein, including Does 1 through 10,
10 inclusive, is responsible in some capacity for the events herein alleged, or is a
11 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend
12 when the true names, capacities, connections, and responsibilities of the Defendants
13 and Does 1 through 10, inclusive, are ascertained.

14 **JURISDICTION AND VENUE**

15 8. This Court has subject matter jurisdiction over this action pursuant
16 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
17 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA").

18 9. This court has supplemental jurisdiction over Plaintiff's non-federal
19 claims pursuant to 28 U.S.C. § 1367, because Plaintiff's UCRA claims are so
20 related to Plaintiff's federal ADA claims in that they have the same nucleus of
21 operative facts and arising out of the same transactions, they form part of the same
22 case or controversy under Article III of the United States Constitution.

23 10. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the
24 Property which is the subject of this action is located in this district and because
25 Plaintiff's causes of action arose in this district.

26 **FACTUAL ALLEGATIONS**

27 11. Plaintiff went to the Business on or about August of 2018 to purchase
28 liquor.

1 12. The Business, including the Property, is a facility open to the public, a
2 place of public accommodation, and a business establishment.

3 13. Parking spaces are some of the facilities, privileges and advantages
4 reserved by Defendants to persons patronizing the Business and Property.

5 14. Unfortunately, although parking spaces were some of the facilities
6 reserved for patrons, there were barriers for persons with disabilities that cause the
7 named facilities to fail as to compliance with the Americans with Disability Act
8 Accessibility Guidelines (“ADAAG”) on or around August of 2018, or at any time
9 thereafter up to and including, the date of the filing of this First Amended
10 Complaint.

11 15. Instead of having architectural barrier free facilities for patrons with
12 disabilities, Plaintiff experienced the following at the Business and Property: the
13 accessible parking spaces are not located on the shortest accessible route to the
14 entrance per Section 208.3.1. Parking spaces complying with 502 that serve a
15 particular building or facility shall be located on the shortest accessible route from
16 parking to an entrance complying with 206.4. Where parking serves more than one
17 accessible entrance, parking spaces complying with 502 shall be dispersed and
18 located on the shortest accessible route to the accessible entrances; the curb ramp at
19 the accessible parking spaces projects into the access aisle in violation of Section
20 406.5 which requires that curb ramps and the flared sides of curb ramps shall be
21 located so that they do not project into vehicular traffic lanes, parking spaces, or
22 parking access aisles; and, parking spaces and access aisles serving them shall
23 comply with 302. Access aisles shall be at the same level as the parking spaces they
24 serve. Changes in level are not permitted.

25 16. Subject to the reservation of rights to assert further violations of law
26 after a site inspection found *infra*, Plaintiff asserts there are additional ADA
27 violations which affect him personally.

28 17. Plaintiff is informed and believes and thereon alleges that, currently,

1 there are no compliant, accessible Business facilities designed, reserved and
2 available to persons with disabilities at the Business in addition to that alleged *supra*.

3 18. Plaintiff is informed and believes and thereon alleges that Defendants
4 had no policy or plan in place to make sure that the parking spaces were compliant
5 for persons with disabilities and remained compliant prior to August of 2018.

6 19. Plaintiff is informed and believes and thereon alleges Defendants have
7 no policy or plan in place to make sure that the complaints of violations alleged
8 above are available to persons with disabilities and remain compliant currently.

9 20. Plaintiff personally encountered the above alleged barriers when
10 attempting to access the Business and Property. These inaccessible conditions
11 denied the Plaintiff full and equal access and caused him difficulty, humiliation,
12 frustration and upset.

13 21. As an individual with a mobility disability who at times is dependent
14 upon a mobility device, Plaintiff has a keen interest in whether public
15 accommodations have architectural barriers that impede full accessibility to those
16 accommodations by individuals with mobility impairments.

17 22. Plaintiff is being deterred from patronizing the Business and its
18 accommodations on particular occasions, but intends to return to the Business for the
19 dual purpose of availing himself of the goods and services offered to the public and
20 to ensure that the Business ceases evading its responsibilities under federal and state
21 law.

22 23. As a result of his difficulty, humiliation, and frustration because of the
23 inaccessible condition of the facilities of the Business, Plaintiff did not fully access
24 the Business or Property. However, Plaintiff would like to return to the location
25 given its close proximity to an area he frequents from time to time.

26 24. The defendants have failed to maintain in working and useable
27 conditions those features required to provide ready access to persons with
28 disabilities.

1 25. The violations identified above are easily removed without much
2 difficulty or expense. They are the types of barriers identified by the Department of
3 Justice as presumably readily achievable to remove and, in fact, these barriers are
4 readily achievable to remove. Moreover, there are numerous alternative
5 accommodations that could be made to provide a greater level of access if complete
6 removal were not achievable.

7 26. Given the obvious and blatant violation alleged hereinabove, Plaintiff
8 alleges, on information and belief, that there are other violations and barriers in the
9 site that relate to his disabilities. Plaintiff will amend the First Amended Complaint,
10 to provide proper notice regarding the scope of this lawsuit, once he conducts a site
11 inspection. However, please be on notice that Plaintiff seeks to have all barriers
12 related to their disabilities remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir.
13 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to
14 have all barriers that relate to his disability removed regardless of whether he
15 personally encountered them).

16 27. Given the obvious and blatant violation alleged hereinabove, Plaintiff
17 alleges, on information and belief, that the failure to remove these barriers was
18 intentional because: (1) these particular barriers are intuitive and obvious; (2) the
19 defendants exercised control and dominion over the conditions at this location, and
20 therefore, (3) the lack of accessible facilities was not an accident because had the
21 defendants intended any other configuration, they had the means and ability to make
22 the change.

23 28. Without injunctive relief, plaintiff will continue to be unable to fully
24 access Defendants' facilities in violation of Plaintiff's rights under the ADA.

25 **FIRST CAUSE OF ACTION**

26 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

27 **42 U.S.C. § 12181 et seq.**

28 29. Plaintiff re-alleges and incorporates by reference all paragraphs alleged

1 above and each and every other paragraph in this First Amended Complaint
2 necessary or helpful to state this cause of action as though fully set forth herein.

3 30. Under the ADA, it is an act of discrimination to fail to ensure that the
4 privileges, advantages, accommodations, facilities, goods, and services of any place
5 of public accommodation are offered on a full and equal basis by anyone who owns,
6 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).

7 Discrimination is defined, inter alia, as follows:

- 8 a. A failure to make reasonable modifications in policies, practices,
9 or procedures, when such modifications are necessary to afford
10 goods, services, facilities, privileges, advantages, or
11 accommodations to individuals with disabilities, unless the
12 accommodation would work a fundamental alteration of those
13 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 14 b. A failure to remove architectural barriers where such removal is
15 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
16 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
17 Appendix "D".
- 18 c. A failure to make alterations in such a manner that, to the
19 maximum extent feasible, the altered portions of the facility are
20 readily accessible to and usable by individuals with disabilities,
21 including individuals who use wheelchairs, or to ensure that, to
22 the maximum extent feasible, the path of travel to the altered area
23 and the bathrooms, telephones, and drinking fountains serving
24 the area, are readily accessible to and usable by individuals with
25 disabilities. 42 U.S.C. § 12183(a)(2).

26 31. Any business that provides parking spaces must provide accessible
27 parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991
28 Standards, parking spaces and access aisles must be level with surface slopes not

1 exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010
2 Standards, access aisles shall be at the same level as the parking spaces they serve.
3 Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are
4 required to be nearly level in all directions to provide a surface for wheelchair
5 transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Specifically, built
6 up curb ramps are not permitted to project into access aisles and parking spaces. Id.
7 No more than a 1:48 slope is permitted. Standards § 502.4.

8 32. Here, the failure to ensure that accessible facilities were available and
9 ready to be used by Plaintiff is a violation of law.

10 33. A public accommodation must maintain in operable working condition
11 those features of its facilities and equipment that are required to be readily accessible
12 to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

13 34. Given its location and options, Plaintiff will continue to desire to
14 patronize the Business but he has been and will continue to be discriminated against
15 due to lack of accessible facilities and, therefore, seek injunctive relief to remove the
16 barriers.

17 **SECOND CAUSE OF ACTION**

18 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL**
19 **CODE § 51 et seq.**

20 35. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
21 above and each and every other paragraph in this First Amended Complaint
22 necessary or helpful to state this cause of action as though fully set forth herein.

23 36. California Civil Code § 51 et seq. guarantees equal access for people
24 with disabilities to the accommodations, advantages, facilities, privileges, and
25 services of all business establishments of any kind whatsoever. Defendants are
26 systematically violating the UCRA, Civil Code § 51 et seq.

27 37. Because Defendants violate Plaintiff's rights under the ADA, they also
28 violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f),

52(a.) These violations are ongoing.

38. Defendants' actions constitute intentional discrimination against Plaintiff on the basis of their individual disabilities, in violation of the UCRA, Civil Code § 51 *et seq.* Plaintiff is informed and believes and thereon alleges Defendants have been previously put on actual notice that its premises are inaccessible to Plaintiff as above alleged. Despite this knowledge, Defendants maintain the Property and Business in an inaccessible form.

PRAYER

WHEREFORE, Plaintiff prays that this court award damages provide relief as follows:

1. A preliminary and permanent injunction enjoining Defendants from further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code § 51 *et seq.* with respect to its operation of the Business and Subject Property; **Note: Plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disable Persons Act at all.**

2. An award of actual damages and statutory damages of not less than \$4,000 per violation pursuant to § 52(a) of the California Civil Code and \$4,000 for each time he visits an establishment that contains architectural barriers that deny the Plaintiff of full and equal enjoyment of the premises (*Feezor v. Del Taco, Inc.* (2005) 431 F.Supp.2d 1088, 1091.)

3. An additional award of \$4,000.00 as deterrence damages for each violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist. LEXIS 150740 (USDC Cal, E.D. 2016);

4. For reasonable attorneys' fees, litigation expenses, and costs of suit, pursuant to 42 U.S.C. § 12205; California Civil Code § 52;

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2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby respectfully request a trial by jury on all appropriate issues
4 raised in this First Amended Complaint.

5
6 Dated: April 1, 2019

MANNING LAW, APC

7
8 By: /s/ Joseph R. Manning Jr., Esq.

9 Joseph R. Manning Jr., Esq.

10 Michael J. Manning, Esq.

11 Craig G. Côté, Esq.

12 Osman M. Taher, Esq.

13 Attorneys for Plaintiff

**PROOF OF SERVICE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the cause. My business address is 20062 SW Birch St. Ste 200, Newport Beach, CA 92660.

On 8/21/2019 I served the true copies of the foregoing document described as:

FIRST AMENDED COMPLAINT

on the interested parties in this action, addressed as follows, **Served by Mail through U S Postal:**

Corporate Office of Atlas Properties
Natasha Radwan- Agent
25401 Cabot Road Ste 208
Laguna Hills CA 92653-5514

☐ CM/EFC Electronic Filing: I caused the above document to be transmitted to the offices of the addresses listed above by electronic mail at the email addresses set forth above pursuant to Fed. R. Civ. P. 5(d)(1). "A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF when emailed to the email address of record in the case, shall constitute the proof of service as required by Fed. R. Civ. P. 5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing in pro se.

☒ By United States Postal Service: The documents were mailed as set forth above by U.S. Mail and placed in sealed, addressed envelopes on the above date and deposited into a U.S. Postal Service Mail box on the date set forth above, with postage thereon fully prepaid at Newport Beach, California.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on August 21, 2019 at Newport Beach, California.

_____/S/ Josie Barron_____

Josie Barron